

Adam B. Schrimm
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
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STEVEN JACOBS

Plaintiff	CASE NO. A-627691
VS.	DEPT. NO. XI
LAS VEGAS SANDS CORP., et al..	Transcript of Proceedings
Defendants	
.....	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING TO SET TIME FOR EVIDENTIARY HEARING

THURSDAY, JUNE 28, 2012

APPEARANCES:

FOR THE PLAINTIFF: JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS: J. STEPHEN PEEK, ESQ.
BRADLEY BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 28, 2012, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Okay. If I could go to Jacobs versus
4 Sands.

5 Mr. Pisanelli, if you'd switch sides of the room.

6 What did you guys do with Mr. Peek? There he is.

7 MR. PEEK: I'm here, Your Honor. The elevator --

8 THE COURT: Well, while you're coming up, Mr. Peek,
9 I've got a question.

10 MR. PEEK: Yes, Your Honor.

11 THE COURT: I've been dealing with what I
12 characterize as a discovery dispute in a jurisdictional
13 portion of this litigation because of the writ I told you to
14 file in the Nevada Supreme Court related to this discovery
15 issue was determined by the Nevada Supreme Court to be
16 inappropriate. So why didn't somebody tell me 11 months ago
17 or so that the Macau Data Privacy Protection Act wasn't going
18 to be an issue because somehow the documents had already
19 gotten to the U.S. and, geez, it was by mistake, but we're not
20 going to pursue that anymore?

21 MR. BRIAN: I'm volunteering to take him up --

22 MR. PEEK: I mean, I could, but I --

23 THE COURT: I don't think you guys understood how
24 frustrated I was when I read the statute.

25 MR. PEEK: No, I'm sure you were very frustrated,

1 Your Honor. And we are prepared to answer that question with
2 -- to you this morning. And I can do it, or I'm going to
3 defer to Mr. Brian, because --

4 THE COURT: I don't care who does it. I'd just
5 really like an answer, because we've spent 11 or 12 months on
6 this issue.

7 MR. PEEK: Yeah. And I think, Your Honor, just
8 understand that although you say it was all here, it's not --
9 what they're suggesting to you, that it is all here, is not
10 exactly correct.

11 THE COURT: Okay.

12 MR. PEEK: So I'll let Mr. Brian --

13 MR. BRIAN: Your Honor, Brad Brian for Sands China
14 Limited. Let me try, Your Honor, because I appreciate Your
15 Honor's frustration.

16 When we got into the case we got in in stages. Mr.
17 Weissman got in a few months before I did. I got in around
18 February or March. And when this issue first came up --

19 THE COURT: You can sit down. You don't have to
20 stand.

21 MR. BRIAN: -- and we learned that there had been
22 some transfers of documents from Macau there was -- those
23 documents were in error. They should not have happened.
24 There was a real concern about what we should do about it.
25 And since that -- since that concern began there have been a

1 number of meetings with the Macau authorities who are
2 responsible for dealing with this issue. Mr. Weissman and
3 another lawyer from the United States travelled to Macau and
4 met with the authorities. There've been I think -- I'm told
5 five meetings, some involving folks from the U.S., others
6 involving lawyers over there, to try to figure out how to deal
7 with this. And the intention at the time -- and frankly there
8 was a concern about whether we could do anything with it,
9 whether or not we were allowed to do anything with those
10 documents. It was not until a meeting on May 29th of this
11 year, after the last status conference that there was
12 sufficient comfort that we could produce in this litigation
13 Macau documents that were already in the United States.
14 Before that it had been our plan, which I --

15 THE COURT: Nobody told me for the 11 months that
16 I've been dealing with it there was a potential issue that you
17 were exploring with the Macau authorities, and all the times I
18 asked questions about whether we could talk to the Macau
19 authorities about making this process work better. Nobody
20 thought to say, gosh, Judge, we're already talking to them
21 because we screwed up and took this information we weren't
22 supposed to and we're trying to see what we're supposed to do
23 now.

24 MR. BRIAN: Your Honor, in hindsight if you could
25 roll the clock back there's no doubt that it would have been

1 better to advise the Court of that. I recognize that. There
2 was real worry about what the implications of all this were,
3 and so the plan had been, which I understand Your Honor did
4 not like and expressed a discomfort about it at the last
5 status conference, which unfortunately I was sick and couldn't
6 attend -- maybe fortunately, I don't know -- was it had been
7 to go through Jacobs's -- Mr. Jacobs's ESI, go through those
8 documents, then compare it to the documents that were already
9 here, and if there were additional documents already here, to
10 go to the Macau authorities and try to persuade them that it
11 was okay to produce them.

12 Your Honor expressed the view that, no, no, we don't
13 sequence that discovery, and I'm not asking Your Honor to
14 revisit that. And then on a meeting on May 29th we got
15 sufficient comfort -- by the way, it's not a waiver issue.
16 The question is what the Macau authorities will do about it in
17 the event we were to make a production in this lawsuit of
18 those documents. We got the comfort and then developed --
19 immediately developed a protocol, went to the plaintiff's
20 lawyers and laid out the protocol, requested a meet and
21 confer, which they were not available to do last week, that's
22 why it appeared this week. So now we're in a process -- we're
23 in a situation where we're going to end up reviewing
24 essentially two sets of what are largely overlapping
25 documents. That's going to be more expensive, more

1 burdensome, more time consuming, I get that. We think it
2 could have been avoided if Mr. Jacobs had produced his ESI
3 earlier. He didn't for reasons that he can explain. But we
4 are where we are. And if we had rolled the clock back, maybe
5 this thing would have been done differently, maybe it should
6 have been done differently. There was no -- there was no ill
7 intent on the part of anybody to do this and in any way
8 conceal it, and all those documents were either going to be
9 produced to the extent they were nonprivileged or recorded on
10 a privilege log. So that's -- that's where we are. And they
11 took -- it took a long time to get guidance from the Macau
12 authorities. This is not a -- the law is complicated and
13 evolving, I think is the best way to say it. And as to what
14 the Macau authorities would do about it is evolving. That led
15 to the multiple -- multiple meetings.

16 THE COURT: Well, I'm very disappointed in the
17 conduct of counsel.

18 MR. BRIAN: I understand, Your Honor. And I can
19 only tell you that it's an issue that -- it's just been a
20 concern, and counsel, the client, everybody have been
21 struggling with certainly since the time we got in this case.
22 I can't speak for what happened before we got in this case,
23 but it's an issue that people have been dealing with, dealing
24 with diligently.

25 I will tell you my perspective -- I mean, I

1 understand that's a concern, but when I went over the papers
2 last night to prepare for this hearing my perspective on it
3 was -- I read two different pleadings. We think that despite
4 Your Honor's --

5 THE COURT: I'm not really worried about what's in
6 the status reports now. I'm worried about the work that we've
7 done related to the production of the documents and the
8 application of the Macau Data Privacy Act and the work we've
9 done on this side and the work that you guys have done on that
10 side when you have the documents here in the U.S. all along.
11 Now, whether they were in the U.S. wrongfully, appropriately,
12 or in violation of Macau law is a different issue. But nobody
13 told any of us, and that's a problem, Counsel.

14 MR. BRIAN: Your Honor, I can only repeat what I
15 said. I understand the Court's frustration, I do. And to the
16 extent that it should have been done earlier, I apologize. I
17 mean, if it had become more -- if it had been raised earlier,
18 maybe in hindsight that would have been better. I'm just
19 telling you that at the time there was a real concern about
20 what we are to do about it, and nobody really had an answer
21 until we went through those series of meetings with Macau
22 authorities. That's -- that may not be satisfactory to the
23 Court, I'm just telling you that's the process that both the
24 clients and counsel went through for the last -- oh, God, last
25 number of four, five months.

1 THE COURT: All right.

2 MR. PEEK: And, Your Honor, since -- since I was the
3 one that --

4 THE COURT: You've been here the whole time.

5 MR. PEEK: I've been here the whole time, and so I'm
6 not going to let Mr. Brian take any hits for me. So I have to
7 take and accept that responsibility, as well. And if we're
8 wrong in your view, Your Honor, I apologize. But it is, as
9 Mr. Brian has described it, a struggle with the Macau PDPA.
10 It's been a struggle for over 14, 15 months or longer since it
11 came to our attention. They're trying to work through that
12 issue with the Office of Personal Privacy Data and the
13 implications that come from that potential violation that put
14 us where we are here today. And for that, Your Honor, I
15 apologize to this Court. I do.

16 MR. BRIAN: And I do.

17 MR. PEEK: And I take that responsibility, Your
18 Honor, because my credibility with this Court is important to
19 me, because I appear in front of this Court an awful lot, and
20 I have been here an awful lot.

21 THE COURT: I sent you on a writ up to the Supreme
22 Court because --

23 MR. PEEK: You did, Your Honor.

24 THE COURT: -- of what you told me about this.

25 MR. PEEK: You did.

1 THE COURT: You didn't have to tell them anything,
2 because they sent you right back.

3 MR. PEEK: They did. But it was a different issue,
4 Your Honor.

5 THE COURT: Overlapping, Mr. Peek.

6 MR. PEEK: I agree, Your Honor, it is overlapping.
7 But certainly --

8 MR. BRIAN: Your Honor, there are -- there are other
9 issues, and I just second what Mr. Peek says. If we made a
10 mistake in judgment, I apologize for that. I can tell you
11 that for many, many months that everybody has been trying to
12 resolve that issue and to solve it. Now, we obviously didn't
13 solve it to the Court's satisfaction, and for that I
14 apologize. But people were trying to solve it and, you know,
15 either there were mistakes made with the transfers and maybe
16 there were mistakes made with how it was handled, but there
17 are other issues raised in the papers, and I would like to
18 address them briefly --

19 THE COURT: Sure.

20 MR. BRIAN: -- because when I read the papers, I
21 mean, I do think that we have acted diligently to -- we've
22 searched over 300,000 documents, we've produced at a cost of
23 more than \$300,000, we have met and conferred, and now we read
24 for the first time yesterday a litany of allegations that we
25 have not been told about, there've been --

1 THE COURT: You're referring to the declaration Mr.
2 Jacobs attached to the status report?

3 MR. BRIAN: I'm referring to the declaration of Mr.
4 Jacobs, which I think, Your Honor, is an example of what is
5 wrong with litigation nowadays, where people put out
6 essentially press releases in the guise of a declaration.

7 And that's what that largely is. There is nothing in that --

8 THE COURT: Because there's absolute immunity for
9 that.

10 MR. BRIAN: I stand.

11 THE COURT: That's why Mr. Adelson got out of the
12 case [inaudible].

13 MR. BRIAN: Well, Your Honor, that -- what's done is
14 done, but that declaration, there are things in there that
15 they're not -- we have never heard about those things before.
16 If Mr. Jacobs --

17 THE COURT: Aren't you glad you know about them now?

18 MR. BRIAN: If Mr. Jacobs truly believed that Mr.
19 Adelson had approved prostitution, he would have resigned. He
20 was fired. And that is in that declaration for one reason.
21 You know that and they know that and Mr. Jacobs knows that.
22 And those sort of false, scurrilous allegations do not belong
23 in the case.

24 With respect to the discovery disputes, we have met
25 and conferred with -- Mr. Weissman and other colleagues at my

1 firm, Mr. Peek, have met and conferred with them on a number
2 of occasions. It was not until yesterday that they said they
3 raised two issues of documents they say we did not produce
4 that should have been produced. They're wrong on one, and Mr.
5 Weissman can explain this if you need more details, and the
6 other one we don't think was ever requested. So we went --

7 THE COURT: And the Mr. Tracy ones have now been
8 produced.

9 MR. BRIAN: We went through -- we went through last
10 night -- because we hadn't seen this declaration and these
11 allegations until we got it, we went through last night and we
12 prepared this report, which if I may pass it up to the Court,
13 goes through some of the allegations of documents that they
14 say were not produced which in fact have been produced.

15 THE COURT: Okay. We've marked it as Court's 1 for
16 you.

17 MR. BRIAN: Thank you, Your Honor. Those documents
18 have been produced. So we're in a situation where we would
19 like to move forward to solve the discovery disputes, not to
20 conjure up disputes and try to make hay out of them, which I
21 think is what's happening on the other side.

22 Now, unfortunately, we have the issue with the Macau
23 documents that Your Honor doesn't feel so kindly toward us
24 about. I understand that. But on the other issues, we have
25 been dealing with this diligently, as competently as we know

1 how to try to move this case forward. We met with the client
2 last night. We are going to double and redouble our efforts
3 to move this thing along and review the Jacobs documents that
4 are in the United States and get those documents that are
5 responsive to jurisdiction produced as quickly as we can. We
6 are the ones who've wanted to move forward with a hearing on
7 jurisdiction. We were the ones who came in and wanted to keep
8 today's date. It was the plaintiff who wanted to delay it.
9 Now they pretend to want to move forward quickly.

10 So we think, Your Honor, we can address the specific
11 issues, but I don't think it's appropriate to put in the
12 declaration that was put in without raising that, I don't
13 think it's appropriate to put in all of these so-called
14 discovery disputes without raising them in a meet and confer
15 and, if they can't be resolved, filing a motion, which is the
16 appropriate -- I think that if there are issues --

17 THE COURT: It is the appropriate way, you're
18 absolutely right.

19 MR. BRIAN: If there are -- if there are documents
20 that they say are responsive that Mr. Jacobs knows were not
21 produced, tell us and we'll go back and look at them, which is
22 what we're going to do now in response to this declaration.
23 Thank you.

24 THE COURT: Okay. I marked your Table of Production
25 as Court's Exhibit 1 so that we have it for the record, but I

1 anticipate always that issues related to compelling documents
2 will be handled by a motion. The status report is merely to
3 tell me if we're going to throw me off schedule further. Part
4 of what we were hoping today was to talk about scheduling.

5 MR. BRIAN: Here's our -- here's our --

6 THE COURT: I'm not sure we're at a point to even
7 talk about scheduling in this case.

8 MR. BRIAN: Well, here's our --

9 MR. BICE: I'd like to be heard before we talk about
10 scheduling, Your Honor.

11 THE COURT: Wait. Not yet, Mr. Bice. Not yet, Mr.
12 Bice.

13 MR. BRIAN: On that -- if you want my thoughts, I'll
14 sit down after that, but --

15 THE COURT: Sure.

16 MR. BRIAN: -- as I say, last night we sat down with
17 the client and talked about how we would essentially increase
18 staffing, increase the expense, and get it done. And we think
19 that we can get all of the documents, other than documents in
20 Macau -- and we have to decide what the Court is going to do
21 with that, because documents in Macau are a whole different
22 situation and involve legal issues that may or may not have to
23 be resolved on the jurisdictional issue. But we think we can
24 get through all of the Jacobs documents and all of the other
25 documents in the United States by Labor Day and get those

1 produced so that if, Your Honor -- if there's no discovery
2 disputes and discovery motions, we think we'd be in a position
3 to have a hearing in October. That's our best bet.

4 THE COURT: All right. Thank you.

5 Mr. Bice.

6 MR. BICE: Yes, Your Honor. I learned about this
7 information -- I think the day before yesterday was the first
8 I --

9 THE COURT: And "this information," you mean the
10 stuff that got taken out of Macau?

11 MR. BICE: Yes. That's right. Now, Mr. Brian
12 didn't -- wasn't on any of the calls that we've had over the
13 course of the last three days about this, so I want the Court
14 to understand what I was told, because you can imagine my
15 reaction when I heard this information. I won't use the same
16 tone that I used over the phone, but I'll try and recall
17 exactly what I said.

18 "How long have you known about this and why weren't
19 we and the Court told about it"; and this is the response I
20 was given, we were under no duty to disclose this to you or
21 the Court. That was the answer I got. I was never told, oh,
22 we've been working with the Macau Government, you know, we
23 didn't know what to do, we've been trying to solve this. The
24 answer was that simple. Ms. Spinelli was also on the phone,
25 and I believe Mr. Pisanelli was in the room. "We had no duty

1 to disclose this to you or the Court." That's why we weren't
2 told about it. It wasn't because of Macau Data Privacy
3 problems.

4 And I love this argument from Mr. Brian, well, we
5 wanted to move the hearing quickly, we wanted to move forward
6 with the hearing. You're darn right he did. That's exactly
7 what they were trying to do. They were trying to cram that
8 hearing down our throat without the facts ever coming to
9 light. And only when you said, we're not going to do that,
10 guess what happens. Now their hands are tied, they have to
11 'fess up that for two years they have been sitting on these
12 documents and even to this day haven't searched them for
13 purposes of this case. They've apparently been searching them
14 for other purposes, I'm sure to deal with the United States
15 Government, but they haven't searched them for purposes of
16 this case. You ordered jurisdictional discovery last year,
17 and they still haven't searched these documents.

18 Your Honor, Mr. Jacobs has a saying, and I can now
19 see how it is in play here. Mr. Adelson told Mr. Jacobs in
20 response to several complaints by Mr. Jacobs about the
21 inappropriate activities that were going on at Sands, it's not
22 what they know, it's what they can prove. And we've now seen
23 that is exactly what's going on in this case. It's not what
24 Mr. Jacobs knows, it's what Mr. Jacobs can prove, so we want
25 to make sure we see Mr. Jacobs's documents before he sees

1 ours. And that was the whole excuse for the sequencing that
2 was going on, and that became crystal clear. And when you
3 called them out and said, you're not permitted to do that,
4 what did they do in the last 30 days relative to producing Mr.
5 Jacobs's emails and the like to us? Nothing. They haven't
6 even searched them by their own acknowledgements. Because,
7 guess what, Your Honor, guess when they get Mr. Jacobs's ESI
8 under our agreement. They get it next week. That's what this
9 is about. This is about stalling as long as they can. They
10 didn't have a duty, to use their exact words, a duty to
11 disclose this to us or to the Court, and now they'll start
12 looking at Mr. Jacobs's emails. And I love this. You know,
13 they've got their resources. They're going to man up now or
14 they're going to get lots of personnel and they're going to
15 start searching through Mr. Jacobs's ESI. Guess when they're
16 going to do that. Just as soon as they get Mr. Jacobs's from
17 Advance Discovery so that they know what he can prove, not
18 what he knows. And that's what -- that's why I took the
19 position, and I ask the Court to do it now, they be directed
20 to immediately deposit all ESI with Advance Discovery. Not
21 that they can search it after they get Mr. Jacobs's documents
22 to determine what he can prove, not what he knows, so that
23 then documents don't get sanitized. And that's what the
24 purpose of his affidavit is.

25 And I'll be happy to address why is affidavit is --

1 was submitted with the status report. Because what has gone
2 on and what we found out about two days ago is they've been
3 holding onto a bunch of documents and they're sanitizing them.
4 They produce a few things. I love this argument, they've
5 produced everything about Ed Tracy. We've responded to that.
6 They've produced duplicates of I think his resume and an email
7 forwarding it. That is it.

8 THE COURT: And those were produced yesterday?

9 MR. BICE: No. Those were produced before then, two
10 days ago.

11 THE COURT: Two days ago.

12 MR. BICE: Right. And that's all they've produced.
13 And then they come to you and say, well, see, we're
14 responding. No. What they're doing is they're trying to just
15 leak out a little information so that they can say to you, oh,
16 we're responding; because they are cherry picking what they
17 don't want to be known. And then they come to us and say,
18 well, you should tell us, tell us what Mr. Jacobs knows, and
19 then we'll go look for additional documents. Again, this one-
20 sided attempt, we want to know what Jacobs can prove before we
21 respond to discovery. Just like they -- how in the world can
22 they stand here and tell you they were not under a duty to
23 disclose to us and to you that for two years they have had
24 Jacobs's emails in the United States? I mean, I can't
25 remember the number of times we were in this courtroom, people

1 from -- they were represented by separate counsel because they
2 couldn't even look at the documents. That was the story. Mr.
3 Peek's firm couldn't even look at the documents. Now it turns
4 out his client is the one that has possessed them all along.

5 Now, I asked point blank questions about this. And
6 you're right, I was -- I was agitated on the phone. I don't
7 deny it. I asked them point blank, how did they get here and
8 when did they get here; the first answer was, well, we'll need
9 to confer with our client about whether or not we're going to
10 answer that question.

11 So then the response came back in a subsequent phone
12 call, they were brought here by a lawyer. They won't tell us
13 who. They claim it was none of them, but they won't tell us
14 who brought them here, and they don't say exactly when they
15 were brought here, just sometime in 2010.

16 Then we started asking followup questions, of
17 course, and then we were accused of conducting an inquisition
18 against them over this stuff, such as, what's been done with
19 them; well, nothing has been done with them. And that's why,
20 Your Honor, we ask you to now take control of those documents
21 and place them with Advance Discovery just like Mr. Jacobs had
22 to do. These people have lost the right -- when I say these
23 people, Sands and Sands China have lost the right to tell us
24 and to tell this Court, trust us, we're going to be forthright
25 with you in discovery, trust us. For two years they kept a

1 secret, a whopper from you and from us, and there is no excuse
2 for it anywhere. They can't be trusted, they've demonstrated
3 they can't be trusted, and the documents need to be placed
4 with Advance Discovery now so that we don't run into more
5 selective sanitizing of the documentation with the assurances
6 of trust us. Tell us, Mr. Jacobs, what else would you like to
7 know, you let us know what you're looking for and then we'll
8 see if we can find it for you. That's not the way it's
9 supposed to be working.

10 And what Mr. Jacobs knows, Your Honor, which is why
11 we submitted this declaration is if they were legitimately
12 running the search terms that they have told us that they ran
13 to pull out these documents about Ed Tracy, Mr. Jacobs knows
14 for a fact other documents would have surfaced. And they
15 didn't. Why is that? Who's making the selection process
16 internally or amongst this group to not find the documents and
17 not produce them? Somebody is. You know, this is the -- this
18 is the problem for them, is that Mr. Jacobs knows the
19 documentation that exists. Again, they want to know what
20 could he prove exists. He knows what exists. And it's not
21 showing up if they were legitimately running these search
22 terms like they claim that they were. And that's why they've
23 lost the right to claim, trust us.

24 After two years of silence while we sat here -- you
25 know, Mr. Brian's firm wasn't involved at that point in time,

1 but we had argument after argument after argument in this
2 courtroom, we had motions for sanctions leveled against us
3 over all this. And while that was ongoing the people in this
4 courtroom sat here with knowledge that they had large volumes
5 of those documents in Sands's possession here in Las Vegas.
6 Can anyone sit here with a straight face and say, we didn't
7 feel that it was appropriate or we were under any duty to
8 inform the Court of that fact? They knew it. And they
9 deceived us. And it wasn't an oversight. You were here, I
10 was here, Mr. Pisanelli was here. It was no oversight.

11 What happened is they wanted to cram that hearing
12 down our throat without ever revealing this fact to us. And
13 when you called them out on the attempt to sequence discovery,
14 that forced their hand. And now the excuse has come out,
15 well, now they've tried to negotiate -- I can't -- really, I
16 can't keep the stories straight. Are you now claiming that
17 you've been negotiating with the Macau Government for the last
18 two years, or are you claiming that you only started that
19 process within the last 30 days? I'm confused.

20 As we've cited to you, Your Honor, in --

21 THE COURT: Let's talk about your discovery.

22 MR. BICE: I'm happy to do that. There's a couple
23 of more points about theirs I'd like to know.

24 They make a reference that there were -- because,
25 again, I learned something new with the status report. Now it

1 turns out that it wasn't just Mr. Jacobs's documents that were
2 transferred to the United States, apparently two other unnamed
3 people. Well, who are they? Why isn't that disclosed to us?
4 Was one of them Eric Chu [phonetic]? I'd like them to explain
5 on the record who those people are, because that may explain
6 to us where there are some additional documents. Is it Eric
7 Chu and Yvonne Mau whose data they transported into the United
8 States and have possessed for the last two years without
9 telling us?

10 That's why we asked, Your Honor -- that's why we
11 submitted an affidavit with the status report. We recognize
12 that affidavits with status reports aren't the norm. And I
13 told them yesterday that we were going to submit it in light
14 of this revelation and what is going on in this case; because
15 there's two things, they've demonstrated that they can't be
16 trusted to produce the information because they've been
17 sitting on it for two years, and they've demonstrated that
18 they can't be trusted to respond to our discovery requests
19 because documentation that Mr. Jacobs knows exists that would
20 be -- would surface in these search terms is also not being
21 produced. Something is afoot here, and it's not oversight.

22 Now, to respond to Her Honor's question, our
23 discovery. Our discovery has been placed with Advance
24 Discovery. Mr. Jacobs was given 10 days in order to review
25 it. That's what we find fascinating. He's got hundreds of

1 thousands of pages, and we agreed to have 10 business days to
2 review it. But they have had this documentation for two
3 years, and, of course, they're just not going to get to it
4 until, guess when, until they get to see Mr. Jacobs's
5 documents, because this case is about what Steve Jacobs can
6 prove, not what he knows. That's why I ask you to force them
7 to now, before they get Mr. Jacobs's data, deposit their
8 documentation with Advance Discovery so that we won't have a
9 dispute down the road when more documents go missing or there
10 are new revelations that the Court didn't need to know and
11 that we didn't need to know about for the last two years.

12 And as we cite to the caselaw for you, Your Honor,
13 we think that there's a little selective interpretation going
14 on of the Macau Data Privacy Act. Whoever these unnamed
15 lawyers are that made the decision that the data could be
16 shipped -- and, of course, it only demonstrates Mr. Jacobs's
17 point all along about who really controls Sands China. It's
18 being controlled from Las Vegas by the Las Vegas executives.
19 Who went and got the documents and pulled them out of Macau?
20 Las Vegas Sands did. Why? Because they're in control. Who
21 are the lawyers that made that decision? When did the Macau
22 Data Privacy Act suddenly become the defense? It seems like
23 it only became the excuse after this Court started saying,
24 we're going to do jurisdictional discovery. It apparently
25 wasn't any obstacle before then.

1 So what we've got going on is when Sands wants to
2 pull information out of Macau for its own purposes it's not an
3 obstacle to it or even its legal team. But when they have to
4 have the burden of responding to discovery in litigation in
5 the United States, whoa, Macau Data Privacy Act, we can't --
6 we can't comply and we can't even tell you, Your Honor, that
7 we've interpreted it and applied it differently for the last
8 two years before our sudden revelation that it applied and
9 precluded us from responding to discovery.

10 That's why we cite the caselaw to you, Your Honor,
11 in our status brief. And I understand again it's a status
12 brief, but we're still trying to move this forward and that
13 the Federal Courts have taken the position that these blocking
14 statutes, especially how it's being invoked in this matter by
15 Sands, do not obstruct discovery and they are still required
16 to respond. That's why we are asking that they be forced to
17 place both the documentation that they have here in Nevada
18 with Advance Discovery so that nothing else happens to it, and
19 that all documentation in Macau that they claim to have
20 preserved also be deposited with Advance Discovery
21 immediately. That way we can work out a protocol that it can
22 legitimately be searched, just like they insisted Mr. Jacobs
23 had to do, legitimately be searched to determine what is in
24 there, not sanitized by people who have an agenda here of not
25 having the bad facts come out, just spoon feeding us what

1 they'd like us to see.

2 And if the Court doesn't have any further questions
3 for me, I will sit down.

4 THE COURT: So your discovery is back on track and
5 the -- Mr. Jacobs is currently reviewing the information that
6 was gathered by the search terms when Advance Discovery ran
7 them --

8 MR. BICE: That is correct.

9 THE COURT: -- and that should be returned to
10 Advance Discovery for them to make any determinations as to
11 personal or private information that Mr. Jacobs has designated
12 and then be produced to the defendants next week?

13 MR. BICE: What Mr. Jacobs has done is he has gone
14 through the documents, he is comparing the search terms that
15 are going to be then run against the database, that those
16 search terms will then pull out those documents, they will get
17 to see the search terms. When that is done they can either
18 agree or disagree. We've agreed that if in the event that
19 there's disagreement that will hold up the process the search
20 terms will be run, the documents will be pulled out and
21 segregated, they will then be given access on a secured server
22 to what remains of the documentation. It's already been de-
23 duped. All that process has already occurred. That's what's
24 obviously --

25 THE COURT: The removal of the documents especially

1 related to Mr. Jacobs's children, which was of a --

2 MR. BICE: Yes.

3 THE COURT: -- significant concern to me when this
4 issue first came up about a year ago --

5 MR. BICE: Yes.

6 THE COURT: -- are going to be pulled out --

7 MR. BICE: That is correct, Your Honor.

8 THE COURT: -- through the search term use.

9 MR. BICE: That is correct, Your Honor.

10 THE COURT: Okay.

11 MR. BICE: And that process has been underway now
12 for a period of time, and it will be done. We agreed that he
13 would have 10 business days to complete that, and he will be
14 done with it.

15 Obviously, Your Honor, in that regard just
16 demonstrating our frustration with this recent revelation is
17 even though they've had this data for two years they haven't
18 even run it to compare it against their own database in Macau
19 to determine what's missing or what isn't missing or what's
20 even left in Macau. They haven't even done that process.
21 Why? Because they want to see what Steve Jacobs has before
22 they produce anything from Steve Jacobs. And that sequencing
23 is what you told them was forbidden, and all they have -- they
24 have granted it to themselves by now just simply using time as
25 the means in which to accomplish it once you told them they

1 weren't allowed to do that.

2 THE COURT: Okay. Before you leave the podium let's
3 talk about scheduling.

4 MR. BICE: Yes, Your Honor.

5 THE COURT: The volume of documents that is going to
6 be provided on the secured server for the defendants to review
7 beginning next week is probably going to take them three to
8 four weeks to get through?

9 MR. BICE: Yes.

10 THE COURT: Okay. Assuming some day you get some
11 more documents from the defendants, how much longer do you
12 think you're going to need before you're ready for the
13 hearing?

14 MR. BICE: We will not need much time. Once we get
15 the documents we will take the depositions within 30 days of
16 our possession of those documents, and we will proceed.

17 THE COURT: Okay. So you're talking about another
18 60 to 90 days basically.

19 MR. BICE: We would think 60. I mean, if Mr. Jacobs
20 -- you know, you had said three to four weeks for them to
21 review it. I wouldn't think it would really take that long.
22 I mean, Mr. Jacobs is reviewing them in 10 business days.
23 They have a far larger army than Mr. Jacobs has. He's doing
24 this -- has to do it, by agreement, all by himself. They
25 could certainly get through those documents a whole heck of a

1 lot faster if the -- and by the way, I'm quite sure they will,
2 Your Honor. I'm quite sure they're going to get through those
3 documents real fast, because they want to see what's in them
4 before the Court tells them what they have to give to me. And
5 that's what's inappropriate.

6 THE COURT: Okay.

7 MR. BICE: Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Brian.

10 MR. BRIAN: I think I can be really brief, Your
11 Honor, unless you have more questions.

12 Let me address very briefly Mr. Bice's request that
13 we be required to deposit these documents with Advance
14 Discovery. I understand there's a big difference, that the
15 Court ordered that of Mr. Jacobs because, contrary to what is
16 normally done, Mr. Jacobs did not take an image of his hard
17 drive, and continued to use it. There was concern, and we had
18 concerns and the Court had concerns, that caused that
19 procedure to be raised.

20 Now, Mr. Bice tries to equate that by saying there's
21 evidence of sanitizing of documents, but that's the issue that
22 just got conjured up yesterday in connection with the status
23 conference report, has never been the subject of meet and
24 confers, and the issue that I think many things they say are
25 wrong. If they have evidence that they think documents exist

1 that were not produced, we're happy to sit down and go back
2 and look at them and try to produce more documents. So I
3 don't -- I don't think the situations are at all -- at all
4 equal.

5 THE COURT: And the documents you're going to look
6 at are the electronically stored information that was taken
7 out of Macau?

8 MR. BRIAN: We're going to -- we are -- on those
9 documents we heard Your Honor loud and clear. We are going to
10 double and redouble and go through those documents. I'm
11 talking about the other documents that are now in his
12 declaration that he says have -- that are just essentially Las
13 Vegas Sands type documents that he says have not been
14 produced. On those documents we should sit down across the
15 room and figure out are there documents that exist that Mr.
16 Jacobs thinks exist that have not been produced, and we'll go
17 back and look at them.

18 THE COURT: Okay. So let's switch gears for a
19 minute.

20 MR. BRIAN: There's no intention to sanitize the
21 documents, certainly by nobody in this room, Your Honor.

22 As to the hearing date, I --

23 THE COURT: Are you finished?

24 MR. BRIAN: Pardon?

25 THE COURT: I have a point, if I could make it,

1 please.

2 MR. BRIAN: Go ahead. Please.

3 THE COURT: I'm inclined to schedule an evidentiary
4 hearing to make a determination as to the failure of the
5 defendants to disclose the existence of the information that
6 was removed from Macau, and at that hearing I want the
7 attorney who was involved in the transporting of the
8 electronically stored information, I want the actual
9 electronic storage devices on which the information was
10 disclosed. When will you be able to provide that information
11 for me so I can conduct a hearing and make a determination as
12 to whether any sanctions are appropriate?

13 MR. BRIAN: I don't know. I may have to ask Mr.
14 Weissman that, Your Honor. I think the individual --

15 THE COURT: I'm going to let you take a chance and
16 make a -- take a short break while I finish up the rest of the
17 cases, and then I'll get to you.

18 MR. BRIAN: We'll do that, Your Honor. Thank you.

19 (Court recessed at 10:28 a.m., until 10:41 a.m.)

20 THE COURT: Gentlemen, we were talking about dates.

21 MR. PEEK: Your Honor, if I understand correctly,
22 what the Court has asked us to do is to have available the
23 individual who took the data from Macau in 2010. I will tell
24 the Court that was former in-house counsel Michael Kastrinski
25 who did that. He no longer is an employee. However, I

1 believe he lives in Las Vegas, so he certainly is available
2 whenever we can get a date, because I'm sure he's within the
3 subpoena power of the Court, and I'm sure he will more than
4 likely cooperate with us. We'll certainly request that he
5 cooperate.

6 THE COURT: He's always cooperated whenever we've
7 asked him to do anything before in other cases.

8 MR. PEEK: So that's the issue with respect to that
9 removal of data by Mr. Kastrinski in 2010. And I don't know
10 when you want to do something -- when you want to have that
11 hearing.

12 THE COURT: Where are the electronic storage
13 devices?

14 MR. PEEK: They are at the Sands, Your Honor.

15 THE COURT: Okay.

16 MR. PEEK: At the Las Vegas Sands Hotel & Casino.

17 THE COURT: They're still preserved?

18 MR. PEEK: They are still preserved, Your Honor.
19 They have been preserved. They have not --

20 THE COURT: That's a good thing, Mr. Peek.

21 MR. PEEK: Yes, Your Honor. They are preserved,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PEEK: They're in the same --

25 THE COURT: Does somebody want to call Mr.

1 Kastrinski? Is he --

2 MR. PEEK: I don't know if he's found new
3 employment. I don't know what he's doing. I've not been in
4 touch with Mr. Kastrinski, Your Honor, for some time. But I
5 can certainly -- I'll reach out to him.

6 THE COURT: I have the week of July 9th fairly open
7 because the CityCenter people moved back a week and Mr. Bice
8 settled his other case and you guys didn't go, so the July
9 stack is more open than it was. So I was looking at the week
10 of July 9th. I figure this as almost a full day, knowing the
11 people involved in this case, and by that I mean the lawyers.

12 MR. PEEK: I have very intense hearings on the 10th.
13 I have I think four or five motions on the 10th.

14 THE COURT: Is that in the Wayne Newton case?

15 MR. PEEK: It is, Your Honor. I also have the
16 deposition of Mr. Kennedy scheduled for the 9th, and also the
17 Harbers scheduled for followup after our motion practice. So
18 certainly towards the end of that week I would --

19 THE COURT: So you're looking at Friday, the 13th?

20 MR. BRIAN: Not a good day to pick, but -- Your
21 Honor, unfortunately, I'm in Washington on some intense
22 confidential negotiation through the 13th, for the next two
23 weeks, starting on Monday.

24 THE COURT: Well, then I guess we can move up to the
25 week before.

1 MR. BRIAN: Can we do it that following week?

2 THE COURT: No, I can't. We can move up the week
3 before, which is the week of the Fourth of July.

4 MR. BRIAN: I can't. See, I start this week, and
5 it's going to run for two weeks.

6 THE COURT: I'm not moving it past my CityCenter,
7 Wayne Newton, and kids fighting over the business with parents
8 cases.

9 MR. PEEK: What was the last one, kids fighting over
10 what?

11 THE COURT: Kids fighting over the business with the
12 parents. It's called CD Construction versus ERC Investments.
13 Max just tells me it's the son fighting with the parents case.

14 MR. PEEK: Doesn't sound like a pleasant one, Your
15 Honor.

16 MR. BRIAN: May we have a moment, Your Honor?

17 MR. PEEK: I'd be available, Your Honor.

18 THE COURT: Now, if you can get the CityCenter folks
19 to resolve their issue on the Harmon, then I could go back to
20 doing regular stuff, and they could get ready for trial.

21 MR. PEEK: So, Your Honor, we're just talking about,
22 what, a half a day, one with Mr. --

23 THE COURT: I'm thinking it's a little more than a
24 half a day knowing the people --

25 MR. PEEK: Okay. So --

1 THE COURT: -- knowing the lawyers involved in this
2 case. And I'm not criticizing you --

3 MR. PEEK: I know you're not, Your Honor.

4 THE COURT: -- and I'm not criticizing Mr. Bice.
5 But you're both very, very thorough. And I am criticizing Mr.
6 Pisanelli. Forty-five minutes on the can I take a deposition
7 motion.

8 MR. PEEK: I was here, Your Honor, listening to --

9 MR. BRIAN: Perhaps, Your Honor, if -- what date
10 works the week of July 9th? I don't know if I can do it, but
11 Mr. Weissman will be here if I can't do it. Is the 13th the
12 best day?

13 THE COURT: Well, your friend here has Wayne
14 Newton's stuff most of that week, he said.

15 MR. BRIAN: Let's set it for the 13th, and somebody
16 from our office will be here. I don't know -- I don't know
17 that it can be me.

18 THE COURT: Okay. Friday, the 13th, at 9:30.

19 MR. BRIAN: That's fine, Your Honor.

20 MR. BICE: Fine with us.

21 MR. PEEK: That's fine, Your Honor.

22 THE COURT: Okay.

23 MR. PEEK: We'll have Mr. Kastrinski here. I
24 assume, Your Honor, you're not asking for outside counsel with
25 respect to what its conversations were with the client to

1 testify --

2 THE COURT: No, I'm not.

3 MR. PEEK: -- Ms. Glaser or myself.

4 THE COURT: I'm not asking for any attorney-client
5 privilege. I am asking for the how did the stuff get out of
6 Macau. You guys have told me why you didn't tell me. I take
7 you at your word. I may disagree with the judgment call that
8 you made, but I have very serious concerns about what happened
9 and the data and what the data actually is and how that
10 impacts the jurisdictional discovery that I've been trying to
11 oversee for almost a year.

12 MR. BRIAN: We understand, Your Honor.

13 MR. PEEK: We understand, Your Honor.

14 THE COURT: Mr. Bice, is there something you want to
15 say, since you're standing up? Or are you just tired of
16 sitting?

17 MR. BICE: Well, I'm tired of sitting, but -- I
18 think I'd like more information about --

19 THE COURT: About what?

20 MR. BICE: About -- you know, I'm not going to just
21 accept the premise that Mr. Kastrinski did this on his own.
22 Maybe he --

23 THE COURT: Well, I'm sure somebody's going to ask
24 him, who told you to do this, or, why'd you do it.

25 MR. BICE: So would it be productive to see if we

1 cannot depose Mr. Kastrinski before the -- we're going to have
2 an evidentiary hearing. I --

3 THE COURT: Sure, you can depose Mr. Kastrinski if
4 you want to.

5 MR. BICE: And that way we can perhaps find out who
6 all has known about this, how long they've known, which is all
7 relevant, it seems to me, to your question.

8 THE COURT: And if there's going to be privilege
9 issues, that somebody's going to set up so we have them and
10 can deal with them.

11 MR. BICE: Yes. And I know he is residing in Las
12 Vegas, so we can work with him to try and set up --

13 THE COURT: For some reason I thought he was still
14 at Harrah's.

15 MR. BICE: He is not --

16 MR. PEEK: No, no. He was at Harrah's, and then he
17 came to us after Harrah's, Your Honor.

18 THE COURT: Okay.

19 MR. BICE: He is not, Your Honor.

20 MR. PEEK: I don't know where he is now. Maybe Mr.
21 Bice does.

22 MR. BICE: Well, since he and I went to law school
23 together, I do -- he is working at a firm. I don't know the
24 name of it.

25 THE COURT: But you're going to find out --

1 MR. BICE: Yeah.

2 THE COURT: -- and you're going to set him for depo
3 and perhaps notify him that I picked the day of July 13th at
4 9:30 to talk with him.

5 MR. BICE: I'm sure he will be very happy, Your
6 Honor.

7 MR. PISANELLI: And, Your Honor, from what we learn
8 from that deposition will we be permitted to subpoena other
9 people from Sands if we find out that they're at the heart of
10 this action?

11 THE COURT: How about we have a conference call if
12 you discover that.

13 MR. BICE: Brief.

14 MR. PISANELLI: Very good.

15 THE COURT: If you want to do anything more than
16 talk to more than talk to Mr. Kastrinski, we have a conference
17 call.

18 MR. BICE: Thank you, Your Honor.

19 MR. BRIAN: We'll be in touch with Mr. Kastrinski and
20 see what his schedule's like for the deposition, Your Honor.

21 THE COURT: Mr. Bice, don't talk to him about
22 anything about this case other than scheduling.

23 MR. BICE: I will not, Your Honor.

24 THE COURT: Thank you. Because I don't want any of
25 us to get into the situation of having a potential

1 disqualification issue raise its ugly head yet again.

2 MR. BICE: Absolutely, Your Honor.

3 MR. PEEK: Your Honor, so --

4 THE COURT: Mr. Williams, thank you very much, by
5 the way for your ESI protocol that was drafted over a year
6 ago, which actually ended up being used.

7 MR. WILLIAMS: I can see it's done a lot of good,
8 Your Honor.

9 THE COURT: I've moved so far forward.

10 MR. PEEK: Your Honor, so that I can be prepared
11 from a briefing standpoint and an argument standpoint --

12 THE COURT: Hold on. Let me get my rule book out so
13 I can tell you what the rules that I'm concerned about.

14 MR. PEEK: -- and what the --

15 THE COURT: There's this rule called Rule 37, but
16 the rule that I think is more important for purposes of this
17 hearing is an infrequently used rule. The last time I believe
18 it was cited in a published decision was the Nevada Power-
19 Fluor case, which should give you an idea.

20 MR. PEEK: I remember Mr. McPike's case well.

21 THE COURT: It was EDCR 7.60.

22 MR. BRIAN: What is it, Your Honor?

23 THE COURT: EDCR 7.60.

24 MR. PEEK: I don't think that's what it was at the
25 time of the -- but I'm sure the rule was there at time of the

1 Nevada Power.

2 THE COURT: No, it was the exact same rule.

3 MR. PEEK: It was the same rule. I was trying to
4 remember --

5 THE COURT: It's never been cited any other time
6 except then.

7 MR. PEEK: Are you looking for those same similar
8 sanctions? Because that's really what I'm -- that's really
9 where I'm going, Your Honor. I understand the violation, but
10 I'm trying to understand where the Court is going with its --

11 THE COURT: I'm not going to put anybody in jail, so
12 I'm not doing this as a contempt proceeding. I'm doing it as
13 a potential sanctions hearing. There are issues related to --
14 monetary sanctions related to attorneys' fees necessitated by
15 this situation.

16 MR. PEEK: I understand that, Your Honor.

17 THE COURT: There's potential sanctions that might
18 go to a charitable organization, and it is unlikely that there
19 will be evidentiary sanctions unless it appears to me there
20 has been data lost as a result of the removal and
21 transportation. And I won't know that until we do more stuff
22 and probably won't occur at this hearing.

23 MR. PEEK: Okay.

24 THE COURT: You understand what I'm saying?

25 MR. PEEK: I do, Your Honor.

1 THE COURT: Okay.

2 MR. PEEK: I just wanted to be clear on it so that I
3 could be prepared to make the arguments.

4 THE COURT: Okay.

5 MR. BICE: Your Honor, may I -- there are a couple
6 points. One, we haven't really addressed my request that they
7 be forced to deposit this data with Advance Discovery prior to
8 their receipt of Mr. Jacobs's data, which we are very
9 concerned is going --

10 THE COURT: You're right. I didn't grant that
11 request.

12 MR. BICE: Okay. I didn't -- well, I didn't hear
13 you deny it, either. That's why I'm asking for the --

14 THE COURT: No. I set this hearing instead and I
15 asked where the originals were, and I was told, and I'm taking
16 Mr. Peek at his word, since he knows I'm rather irritated at
17 the moment.

18 MR. BICE: I understand that. But do they get Mr.
19 Jacobs's data next week?

20 THE COURT: Absolutely.

21 MR. BICE: All right.

22 THE COURT: Anything else?

23 MR. BICE: And I don't want my silence to your
24 comments to be deemed that we will not be seeking other
25 sanctions other than what the Court has detailed.

1 THE COURT: Since this was set sua sponte by me, as
2 opposed to a motion by you --

3 MR. BICE: Yes.

4 THE COURT: -- I always try and give people the
5 opportunity to have a hearing before I sanction them, unless
6 it's for something that's obvious, like rolling their eyes,
7 yelling at me, calling me names, or something like that.

8 MR. BICE: Understood, Your Honor. I just didn't
9 want my silence to somehow be --

10 THE COURT: Ten days sometimes is enough for those
11 kind of hearings, but this one will be shorter.

12 MR. BICE: Understood, Your Honor.

13 MR. PEEK: Ten days in jail, Your Honor, for --

14 THE COURT: Ten days for a hearing, Mr. Peek.

15 MR. PEEK: I was concerned about --

16 THE COURT: You never went to jail during that
17 hearing.

18 MR. PEEK: No, I know.

19 THE COURT: And your client ended up never going to
20 jail here in the U.S., for that matter.

21 MR. PEEK: And you know he passed away, Your Honor.

22 THE COURT: Yeah, he did.

23 Anything else?

24 MR. BRIAN: No. Thank you, Your Honor.

25 THE PROCEEDINGS CONCLUDED AT 10:52 A.M.

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

6/29/12

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

DATE